A contested case hearing was held on December 18, 1991, at (city), Texas, (hearing officer) presiding as hearing officer. He determined that the appellant, claimant herein, did not receive an injury that arose out of or that was in the course and scope of his employment and therefore, was not entitled to benefits under the Texas Workers' Compensation Act. TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). Claimant disagrees with one of the hearing officer's findings of fact, one of his conclusions of law, and his decision. Claimant asks that we reverse and render a decision that claimant did suffer an injury in the course and scope of employment and that he is entitled to benefits.

DECISION

Finding the evidence sufficient to support the findings, conclusions, and decision of the hearing officer, we affirm.

The claimant worked for (employer) on (date of injury)

(date of injury), when he claims he injured his back while attempting to push a heavy steel beam with his feet while his back was against a closed tailgate of a pickup truck. (Employer) carries workers' compensation coverage with the carrier.

The claimant was working with two other employees, Mr. A and Mr. H, and he testified he told them he injured his back while they were riding back to the employer's place of business. Claimant stated he did not work anymore that day (apparently there was no more work to perform) and that he called in the next day, January 10, to see if there was any work. He did not mention to his employer (Mr. G) on (date of injury) or 10 that he injured himself.

On January 11, he called Mr. G again to inquire about work and when told there was none available, he discussed claiming for unemployment compensation with Mr. G. Following this discussion, claimant mentioned that he had hurt his back. Nothing more was discussed between the claimant and Mr. G.

The claimant testified he went to a chiropractor, Dr. S, on January 13th or 14th (medical records show this to be January 15th). He was subsequently referred to a Dr. G; a D.O. in Neurology, who stated the "neurologic examination is non-focal and the pain seems most consistent with lumbosacral sprain/strain."

The employer, Mr. G, testified for the carrier and agreed with the sequence of events concerning the claimant's reporting of an injury. He stated that after discussing unemployment benefits, the claimant mentioned he hurt his back. Subsequently, Mr. G conducted an informal investigation by talking to both Mr. A and Mr. H who had been with the claimant at the time of the claimed injury. Both of these persons indicated to Mr. G that the claimant had not done any lifting of the steel beam and they knew of no injury or report of injury. Neither Mr. A nor Mr. H were available, one being in jail and one having moved out of town. Earlier telephonically recorded statements from both Mr. A and Mr. H were admitted into evidence. These statements set forth that the claimant did not tell either individual about being hurt nor was either individual aware of any injury occurring on January 9th.

Claimant disagrees with the finding of fact that claimant did not injure his back while working for the employer on (date of injury), unloading an I-beam from a trailer and the conclusion that claimant did not receive an injury that arose out of or that was in the course

and scope of his employment on (date of injury). Claimant urges there is some inconsistency within Mr. H's telephonic statement and between Mr. H's statement and the statement of Mr. A.

We have reviewed the entire record and find the evidence sufficient to support the hearing officer's findings, conclusions, and decision. We do not find any material inconsistencies within Mr. H's statement or between his statement and that of Mr. A. In any event, to whatever degree there may be any material inconsistency, this was for the hearing officer to resolve. As the trier of fact, the hearing officer resolves any conflicts and inconsistencies in the evidence and assesses weight and credibility to be given the evidence. Article 8308-6.34(e); Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Where the evidence is sufficient to support the hearing officer's determination, even though there is evidence which could support a contrary finding, reversal is not warranted. Texas Workers' Compensation Commission Appeal No. 92002 decided February 19, 1992, and cases cited therein. Finding the evidence sufficient to support the findings, conclusions, and decision of the hearing officer, the case is affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Joe Sebesta
Appeals Judge